

**MEMORANDUM OF AGREEMENT  
BETWEEN NORTHERN INDIANA PUBLIC SERVICE COMPANY  
AND THE U.S. ARMY CORPS OF ENGINEERS,  
CHICAGO DISTRICT**

THIS Memorandum of Agreement (“MOA”) is entered into by the Northern Indiana Public Service Company (hereinafter the “Company”) and the United States Army Corps of Engineers’ Chicago District (hereinafter “Chicago District”), collectively referred to as the “Parties.”

**RECITALS**

WHEREAS, the United States Army Corps of Engineers (“Corps”) has regulatory jurisdiction over certain activities occurring in waters of the United States, including wetlands, pursuant to Section 404 of the Clean Water Act of 1972 (“CWA”), as amended, and navigable waters of the United States pursuant to Section 10 of the Rivers and Harbors Act of 1899 (“RHA”), as amended; and

WHEREAS, Section 214 of the Water Resources Development Act of 2000 (“Section 214”), as amended, codified at 33 U.S.C. 2352, authorizes the Secretary of the Army, after public notice, to accept and expend funds to expedite the permit application review process related to a project or activity for a public purpose; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out Section 214, as amended, to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers, by memorandum dated September 2, 2015, has delegated responsibility to the District and Division Engineers of the Corps to accept and expend funds contributed by the Company subject to certain limitations; and

WHEREAS, the Chicago District has indicated it is not able, without additional resources, to expedite the evaluation of the Company permit applications; and

WHEREAS, the Company is a public utility and natural gas company and believes it is in its best interest to provide funds to the Chicago District pursuant to this MOA to streamline and expedite the Chicago District’s review under Section 404 of the CWA and/or Section 10 of the RHA for Company-designated priority projects, as more fully described in this MOA; and

WHEREAS, the Chicago District issued an initial Public Notice dated March 17, 2017, regarding its intent to accept and expend funds contributed by the Company; and

WHEREAS, in a memorandum dated December 2017, the District Engineer for the Chicago District determined that the acceptance and expenditure of funds received from the Company is appropriate, and an informational public notice, regarding its decision will be issued; and

WHEREAS, it is understood and acknowledged by all Parties that the Chicago District's review of Company permit applications for Company-designated priority projects with a public purpose will be completely impartial and in accordance with all applicable Federal laws and regulations; and

WHEREAS, this MOA is intended to: (1) enable the Parties to fully consider, address, and protect environmental resources early in the development of proposed actions; (2) avoid conflicts late in project development through close coordination during early planning and development stages; (3) provide sufficient information to the Districts for timely analysis of project effects and to assist the Company in developing appropriate mitigation measures; (4) maximize the effective use of limited Corps personnel resources by focusing attention on projects that would most affect aquatic resources; (5) provide a mechanism for expediting project coordination when necessary; and (6) provide procedures for resolving disputes in this resource partnering effort.

NOW, THEREFORE, the Parties agree as follows:

## AGREEMENT

### Article I. - PURPOSE AND AUTHORITIES

A. Pursuant to Section 214, this MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by the Company to provide expedited permit application evaluation-related services for Company-designated priority projects requiring the Chicago District's approval pursuant to Section 404 of the CWA and Sections 10 of the RHA ("Priority Projects"). This MOA is not intended as the exclusive means of obtaining review of Priority Projects; it is a vehicle by which the Company will obtain expedited permit application evaluation-related services, outside of the Chicago District's standard review process. Priority Projects are defined as the list of Company-designated projects in the required order for processing by the Chicago District.

B. The Company is a public-utility company and a natural gas company as defined in 33 U.S.C. 2352 and accordingly is authorized to enter into this MOA to fund evaluation of Company permit applications related to a project or activity for a public purpose.

C. The Chicago District enters into this MOA pursuant to its authority under 33 U.S.C. § 2325.

### Article II. - SCOPE

A. The Company will provide funds to the Chicago District to expedite the permit application evaluation-related services of Priority Projects with a public purpose under the jurisdiction of the Corps. The Chicago District's Regulatory Program is funded as a congressionally appropriated line item in the annual Federal budget. Funds received from the Company will be added to the Chicago District's Regulatory budgets, in accordance with the provisions of Section 214.

B. The Chicago District will provide staffing resources exclusively dedicated to expediting permit application evaluation-related services, as described below, for Priority Projects.

C. The Chicago District will establish a separate internal financial account to track receipt and expenditure of the funds associated with its review of permit applications for Priority Projects. The Chicago District Regulatory personnel will charge their time against the account when they perform work to expedite permit application evaluation-related requests for Priority Projects.

D. Funds contributed by the Company hereunder will be expended by the Chicago District to defray the costs of Regulatory personnel (including salary, associated benefits, overhead, and travel expenses) and other costs in order to expedite the evaluation of Priority Project permit applications. Activities covered by this MOA will include, but not be limited to, the following: application intake review; initiating and monitoring consultations with USFWS under the Endangered Species Act and with the Office of Historic Preservation (OHP) under Section 106 of the National Historic Preservation Act; permit database entry; drawing corrections; jurisdictional determinations; site visits; preparing and distributing public notices; preparing and conducting public hearings; preparing correspondence; performing the public interest review; preparing draft permit decision documents; meetings with the Company and other agencies, such as the Indiana Department of Environmental Management (IDEM); permit compliance; mitigation monitoring; preparing reports for the Company and audits of funds expended; technical writing; training; travel; field office set up costs including rent and utilities; vehicle lease/rental and fuel; copying; coordination activities; technical contracting (including development of documents under the National Environmental Policy Act); programmatic tool development and/or improvement; acquisition of GIS data; and any other Section 404 of the CWA and Section 10 of the RHA permit application evaluation-related responsibilities performed by the Chicago District.

E. The Chicago District will not expend funds provided by the Company for costs associated with the review of the Chicago District's work undertaken by supervisors or other persons or elements of the Chicago District in the decision-making chain of command. If a supervisor is performing staff work and not supervisory review or oversight, funds may be used for the staff work; however, this supervisor would not be eligible to review and approve any permit decisions or decision documents completed with funds contributed by the Company. Enforcement activities will not be paid for from the funds contributed by the Company. The Chicago District will not expend funds provided by the Company to defray the costs of activities related to the Chicago District's enforcement functions, but may use funds related to permit compliance functions. The Chicago District will not expend funds provided by the Company to continue activities for the Company should a lapse in Federal appropriations result in a shutdown or furlough for the Chicago District's Regulatory personnel.

F. The Chicago District may expend funds by the Company to hire contract staff to perform select duties. If such expenditures, when combined with the costs of the Regulatory personnel specified in Article II.D. require funding in excess of the amount available under this MOA, then said contractors shall not be utilized by the Chicago District until and unless

additional funds are provided by the Company and the Parties execute a written amendment to this MOA.

G. If the funds provided by the Company are expended and not replenished, any remaining Priority Projects will be processed like those of any permit applicant.

H. The Chicago District will perform services in accordance with all applicable federal laws, rules, regulations, guidance, polices, and procedures. Energy exploration and production activities, such as drilling, hydrofracturing, or mining, are not to be reviewed under Section 214 agreements with public-utility companies or natural gas companies, because these activities do not involve the generation, transmission, or distribution of electric energy; or the transportation and/or distribution of natural gas.

### Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication, the Chicago District and the Company each will appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. The Chicago District and the Company each will issue a letter to the other designating the Principal Representative for each agency. Either Principal Representative may be changed upon written notification to the other party. Both the Chicago District and the Company agree that ready and reasonable access will be provided to working level staff of each party in an effort to minimize the need for formal meetings.

### Article IV. - NOTICES

Any notices, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and delivered personally, or sent by email, or mailed by first-class, registered, or certified mail to the applicable Principal Representative. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven (7) business days after it is mailed.

### ARTICLE V. - RESPONSIBILITIES OF THE PARTIES

A. The Company will provide adequate resources to fund existing or additional Corps Regulatory personnel for the purpose of expediting the review of Priority Projects. To facilitate the Chicago District's reviews, the Company will:

1. Provide adequate information regarding Priority Projects, scheduling requirements, and other specific activities to initiate permit evaluation. Upon request, the Company shall provide such additional information necessary to assure the Chicago District can effectively accomplish the required review.
2. Make a reasonable effort to provide the Chicago District with information on other projects with Company involvement that may affect the Chicago District's workload and staff availability (e.g., schedules for projects with individual permits).

3. In consultation with the Chicago District, schedule Chicago District's involvement in the Priority Projects.

4. To the best of its ability, ensure the participation of all essential personnel, customers and decision makers during the permit evaluation process.

5. Work closely with the Chicago District to resolve workload conflicts and adjust priorities and schedules in order to make optimal use of available staff resources and to ensure delivery of permits in a timely manner.

6. Work closely with the Chicago District Principal Representative identified in Article III to develop an estimate of the amount of work and funding for The Chicago District each Federal fiscal year.

B. The Chicago District will use the funds provided by the Company to defray the costs of salaries and associated benefits, relevant training, and to reimburse travel expenses in order to:

1. Expedite review of the Priority Projects in accordance with the purpose, terms, and conditions of this MOA. The Chicago District shall not redirect resources from, or otherwise postpone, permit applications related to non-Priority Projects submitted by the Company through the standard Corps review process.

2. Ensure that performance metrics contained in Exhibit C are met. Consult with the Company regarding an adjustment of priorities or establishment of relative priorities if necessary to meet performance metrics.

3. Provide the Company a monthly report which shall track, on a project by project basis, the labor and materials expenditures, and services provided under the MOA for the Chicago District. The tracking shall include the project name, significant project dates such as receipt of documents, project timetable, requests for additional application information, project deliverables, and successful project completion. This information may be captured in Exhibit A, "Monthly Reports," during quarterly status reviews or in a separate document for metrics, as demonstrated under Exhibit B, "Metrics." Additional metrics shall be captured on a quarterly basis as per Exhibit C "Metric Target Tracking." The fourth quarter report shall include a summary of the annual progress made under this MOA.

4. Designate a Chicago District Regulatory Project Manager who will make his or her best efforts to attend periodic meetings with the Company. The Company will meet with the Chicago District on a quarterly basis, together with other agencies, as appropriate.

## Article VI. - PERFORMANCE METRICS

The Parties have agreed to set performance metrics for the purpose of evaluating activities under this MOA. The performance metrics are included in Exhibit C to this MOA and incorporated herein by reference.

Article VII. - FUNDING

A. Unless amended, the maximum payable under this MOA will not exceed \$50,000/year.

B. Within 30 days of the effective date of this MOA, and every 90 days thereafter for the life of this MOA, and prior to the Chicago District expending any funds to expedite permit application evaluation-related activities as specified in this MOA, the Chicago District will provide the Company with an anticipated cost invoice (“Invoice”) that provides a budget estimate of costs anticipated to be incurred by the Chicago District for a subsequent 90-day period. Unless incomplete or disputed, upon receipt of the Chicago District’s Invoice, the Company agrees to compensate the Chicago District the total amount specified in the Invoice(s) within thirty days. Incomplete or disputed Invoices will be returned to the Chicago District for correction prior to the Company making an advance payment. Payments by the Company are to be made by check or Electronic Funds Transfer.

C. If the Chicago District’s actual costs for providing the agreed upon level of service will at any time during the term of this MOA exceed the total amount of funds available under Article VII.A, the Chicago District will notify the Company at least ninety (90) days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. The Company will either initiate an amendment to this MOA to increase the funding amount, or agree to a reduced level of service.

D. The Chicago District will carry-over any unobligated funds from year to year, which will be credited to the Company’s following payment, or will refund such unobligated funds if this MOA is terminated or expires in accordance with Article XI.

E. The Chicago District will neither accept nor expend funds under this MOA after June 10, 2024, unless Federal law extends the Corps’ authority under Section 214, to accept and expend funds contributed by public-utility and natural gas companies to expedite the processing of permits.

F. All Invoices with attached budget estimates, quarterly reports, and final statement of expenditures shall be submitted to the Company at the following address:

231 S. LaSalle St. Suite 1500

Chicago, Illinois 60604-1437

## Article VIII. - APPLICABLE LAWS

All applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all expediting of permit applications undertaken by the Chicago District will be governed by the Chicago District's regulations, policies and procedures.

## Article IX. - DISPUTE RESOLUTION

In the event of a dispute, the Parties agree to use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. If the disagreement does not resolve at the staff level, the matter will be referred to the applicable Chicago District's Regulatory Program Chief and the Company's Manager of Natural Resources Permitting. If the disagreement is still unresolved, the matter will rise to the Chicago District Engineer and the Company's Director Environmental Permitting, followed by the Corps' Great Lakes and Ohio River Division Commander and the Company's Vice President Environmental. The Parties agree that, in the event such measures fail to resolve the dispute, they shall refer the dispute for resolution to an appropriate forum in accordance with Federal law.

## Article X. - PUBLIC INFORMATION

The Chicago District will not be responsible for justifying or explaining Company programs or projects before other agencies, departments, and offices. The Chicago District may provide, upon request from the Company, any assistance necessary to support justification or explanations of activities conducted under this MOA. In general, the Chicago District is responsible only for public information regarding Chicago District's Regulatory activities. Company will give the Chicago District advance notice before making formal, official statements regarding Chicago District's activities funded under this MOA.

## Article XI. - AMENDMENT, MODIFICATION AND TERMINATION

A. This MOA may be modified or amended only by written, mutual agreement of the Parties.

B. The Parties reserve the right to terminate this MOA without cause upon thirty (30) day's written notice to the other Party. In the event of termination, the Company will continue to be responsible for all costs incurred by the Chicago District in performing expedited permit review services up to the time of notice and for the costs of closing out any ongoing contracts in support of the provision of services by the Chicago District under this MOA.

C. Within ninety days (90) days of termination, or expiration of the MOA, the Chicago District shall provide the Company with a final statement of expenditures. Within sixty (60) calendar days of submittal of the Chicago District's final statement of expenditures, the Chicago District, subject to compliance with the Anti-Deficiency Act (31 U.S.C. §§ 1341 et seq.), shall directly remit to the Company the unexpended balance of the advance payments, if any. Funds may be provided to the Company either by check or by Electronic Funds Transfer.

Article XII. - MISCELLANEOUS

A. This MOA will not affect any pre-existing or independent relationships or obligations between the Parties.

B. If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

C. Under the provisions of Section 214, no funds may be accepted or expended by the Chicago District pursuant to this MOA after June 10, 2024. However, if prior to this date, this statutory authority is extended or made permanent, then provisions of this MOA shall remain in force until the earlier of the sun setting of Section 214, as further extended, or until termination by either Party as provided in this MOA.

D. Preparation of any internal briefing papers, internal electronic messages, internal fact sheets, internal presentations, or other internal communications or deliberative/pre-decisional documents using funds provided pursuant to Section 214, does not constitute a waiver of any privileges applicable to release of these internal materials pursuant to the Freedom of Information Act (5 U.S.C. § 552) or any other applicable federal law or regulation.

E. The Chicago District's participation in this MOA does not imply endorsement of the Company or the Priority Projects nor does it diminish, modify, or otherwise affect the Chicago District's statutory or regulatory authorities.

F. This MOA, including any documents incorporated by reference or attachments thereto, but excluding the pre-existing relationships or obligations between the Parties referenced in subparagraph A above, constitute the entire agreement between the Parties. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

Article XIII. - EFFECTIVE DATE AND DURATION

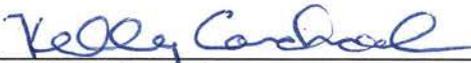
This MOA and any amendments will become effective on the date of execution by the last party. Unless amended or modified, this MOA shall remain in force until whichever of these events occurs first: 1) June 10, 2024, or 2) the MOA is terminated pursuant to Article XI.B.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, this MOA is executed by the Northern Indiana Public Service Company, acting by and through its authorized officer, and by the U.S. Army Corps of Engineers' Chicago District, through its authorized officer.

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**NORTHERN INDIANA PUBLIC SERVICE COMPANY**

By:   
Kelly Carmichael  
Vice President, Environmental

Date: 2/1/18

**U.S. ARMY CORPS OF ENGINEERS, CHICAGO DISTRICT**

By:   
AARON W. REISINGER  
COL, EN  
Commanding

Date: 01/08/2018

# NIPSCO USACE Project Coordination

## Exhibit A: Monthly Report Via SmartSheet™



Project Name	Priority	Type	Assigned to:	Proposed Construction Start Date	Wetland Survey (Date)	Wetland Delineation Report Completed (Date)	Cultural Resources Survey Required?	T/E Species Coordination Required?	Wetland Boundary JD Site Visit required?	Wetland Permit Application Submitted (Date)	Type of Permit Requested (IP, NWP 3, NWP 12, NWP)	Project Impacts (Permanent or Temporary & Acres)	Mitigation Required	USACE Review Complete (Date)	USACE Data Request (Date)	NIPSCO Reply (Date)	IDEM 401 Individual WQC Approval (Date or NA)	USACE Permit Issued (Date or NA)	Construction Completed, Permit Closed	Status Notes		
<b>USACE Permitting Phase (2)</b>																						
Tee Lake to Train Creek 3465 Rebuild (example project)	!	Power Line	Gordon Ferguson	09/04/17	06/15/16	10/06/16	No	Yes	No	05/05/17	NWP 12	1.54 (permanent)	<input checked="" type="checkbox"/>	08/17/17	NA	NA	08/17/17	08/17/17		Project is under construction.		
2019 Luchtman to Burdick 69 kV (example entry)	—	Power Line	Gordon Ferguson	08/05/18	09/11/17	12/15/17	No	Yes	Yes	01/18/18	NWP 33	0.05 (temporary)	<input type="checkbox"/>									
Aetna LaPorte Pipeline Phase III (example entry)	↓	Gas Pipeline	Steve Barker	04/09/18							IP		<input checked="" type="checkbox"/>									
											No Permit Letter		<input type="checkbox"/>									
<b>NIPSCO Active Projects (2)</b>																						
New Acme Chemical, Hammond (example entry)		Gas & Electric	Natalie Conlon	10/15/18	10/09/17	12/15/17	No	Yes	Yes			0.4 acres (Permanent)	<input checked="" type="checkbox"/>									
<b>NIPSCO Future Projects (1)</b>																						
2019 Roxanna Substation TDSIC (example entry)		Substation	Gordon Ferguson	01/05/19									<input type="checkbox"/>									
<b>Notifications / Functionality</b>																						
1. NIPSCO Future project moves from future project to active project in environmental field survey phase. Notifications generated for NIPSCO NRP team and Paul Leffler at USACE.													<input type="checkbox"/>									
2. NIPSCO Project row moves from NIPSCO Active Project to USACE Permitting Phase after submittal of wetland delineation Report and/or permit application to USACE Chicago District. Notification e-mail via SmartSheet is sent to USACE Chicago Regulatory Staff (Paul Leffler).													<input type="checkbox"/>									
3. After USACE Permitting Phase is completed Row is moved from Active Sheet into Archive Sheet separated by year permit issued.													<input type="checkbox"/>									

## **Exhibit B**

### Metrics

The Chicago District and Company establish the following metrics for evaluating the timely review of permit applications for planned activities in wetlands and navigable waters by the Chicago District pursuant to Section 404 of the Clean Water Act (CWA) of 1972 and navigable waters of the United States pursuant to Section 10 of the Rivers and Harbors Act (RHA) of 1899, respectively:

- Individual Permits (IP) – IP applications for activities in wetlands or navigable water bodies of the United States will be reviewed and Company notified of a permitting decision within 4 months of Chicago District receipt of a complete application, provided the Chicago District performs a completeness review and notifies the Company of missing data within 30 days after receipt and NIPSCO responds to Chicago District data requests in a timely manner (e.g. within 30 days);
- Section 10 permits - Applications for activities in or crossings of navigable (i.e. Section 10) waters of the United States will be reviewed and Company notified of a permitting decision in 30 to 45 days, assuming NIPSCO responds to Chicago District data requests in a timely manner (e.g. within 7 to 14 days);
- Nation Wide Permit 3 (Maintenance) project information will be reviewed within 15 days and Chicago District will consult and coordinate with the Company if projects do not meet NWP 3 standard conditions;
- Nation Wide Permit 6 (Survey Activities) project information will be reviewed within 15 days and Chicago District will consult and coordinate with the Company if projects do not meet NWP 6 standard conditions;
- Nation Wide Permit 12 (Utility Line Activities) – Pre-Construction Notifications (PCNs) submitted to USACE will be reviewed and Company notified of a permitting decision within 30 to 45 days, assuming NIPSCO responds to Chicago District data requests in a timely manner (e.g. within 7 to 14 days), and
- Nation Wide Permit 33 (Temporary Construction, Access, and Dewatering) project information will be reviewed within 15 days and Chicago District will consult and coordinate with the Company if projects do not meet NWP3 standard conditions, unless project has activities in navigable (i.e. Section 10) waters, then review period will be increased by an additional 30 days.

**Exhibit C: Performance Metrics  
Projects Reviewed by Chicago District by Quarter (1)**

NIPSCO Projects by Permitting Category	1st Quarter 2018				2nd Quarter 2018				3rd Quarter 2018				4th Quarter 2018			
	Total Submitted	15 days	30 to 45 days	4 months	Total Submitted	15 days	30 to 45 days	4 months	Total Submitted	15 days	30 to 45 days	4 months	Total Submitted	15 days	30 to 45 days	4 months
Individual Permit (IP)																
Section 10 (Navigable Waters)																
NWP 3 (Maintenance Activities)																
NWP 6 (Survey Activities)																
NWP 12 (Utility Line Activities)																
NWP 33 (Temporary Construction, Access, and Dewatering)																

**Totals**

Additional Metrics by Quarter	First Quarter 2018				2nd Quarter 2018				3rd Quarter 2018				4th Quarter 2018			
Metric 1 (TBD) (2)																
Metric 2 (TBD)																
Metric 3 (TBD)																
Metric 4 (TBD)																

**Totals**

Metric Comments by Quarter (3)	First Quarter 2018				2nd Quarter 2018				3rd Quarter 2018				4th Quarter 2018			

Notes:

- (1) Table provides a breakdown of wetland and water body permit applications reviewed by Chicago District within performance metric timeframes described in Exhibit B.
- (2) Additional performance metrics for MOA to be determined (TBD) during first quarter 2018 status review meeting between Chicago District and NIPSCO.
- (3) Chicago District can provide comments about unique project conditions that required one or more projects to require more permit application review time that exceeded goals.